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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,518	07/18/2003	Margaret F. Hudson	10704-8 MIS:jb	1166
24223	7590	05/02/2006	EXAMINER	
SIM & MCBURNEY 330 UNIVERSITY AVENUE 6TH FLOOR TORONTO, ON M5G 1R7 CANADA			WEIER, ANTHONY J	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 05/02/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/621,518

Applicant(s)

HUDSON ET AL.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### **Withdrawal of the Finality of the Last Office Action**

1. In view of recently discovered highly pertinent prior art, the finality of the rejection of the last Office action is withdrawn.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 5, 7, and 15 re rejected under 35 U.S.C. 102(b) as being anticipated by Rapp et al.

The claims are rejected for the reasons set forth in the last Office Action (mailed 5/16/05).

4. Claims 1, 2, 5, 7, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Pickford.

Pickford discloses a food product comprising a predusted, breaded and batter coated scrambled egg core which has been shaped and including egg albumen (which was a liquid when preparing the scrambled eggs) and gum wherein gelatin is disclosed as an alternate for gum, variety of other foods and optional seasonings (e.g. garlic sausage) wherein said food product has been partially fried by flash frying (see col. 2, lines 21-25 and 58-64; Example 14; col. 10, lines 32-50; claim 1).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 4, 6, 8, 9, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapp et al.

The claims are rejected for the reasons set forth in the last Office Action (mailed 5/16/05).

7. Claims 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapp et al taken together with Heick et al.

The claims are rejected for the reasons set forth in the last Office Action (mailed 5/16/05).

8. Claims 3, 4, 6, 8-14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pickford.

Pickford further discloses the presence of bacon and cheese in the composition (as called for in instant claims 12-14).

Pickford, in disclosing scrambled eggs, has inherently discloses as well the ingredients making up same. Clearly, the use of water and/or oil (to at least avoid pan sticking) would be expected for inclusion. Nevertheless, it is well known to employ such ingredients in the preparation of scrambled eggs, and it would have been obvious to

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one having ordinary skill in the art at the time of the invention to have included same as a matter of convention with regard to the preparation of scrambled eggs.

The claims further call for the product having an elongate shape. Although Pickford discloses shaping of the food article, same is silent regarding the particular shapes rendered. However, batter coated foods are well known to have elongated shaped, and, absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have made the egg product of Pickford in any desired shape including elongated shape as a matter of, for example, aesthetic preference.

The claims further call for salt and pepper as the seasonings. Both salt and pepper are notoriously well known seasonings and well known for their use in making scrambled eggs and other egg products. It would have been further obvious to have included such seasoning for their notoriously well known purpose of seasoning and to have used same as a matter of preference regarding the particular taste desired in the product.

The claims further call for the presence of xanthan gum, edible oil, citric acid, skim milk powder, and modified starch in combination. It should be noted that Pickford further discloses the use of xanthan gum and modified starch (e.g. claim 1). Milk powder or milk is well known as an ingredient in scrambled egg products as well as the aforementioned edible oil. In addition, citric acid is a well known preservative and would have been further obvious as a component in food products for such purpose. It would have been obvious to one skilled in the art at the time of the invention to arrive at such

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combination as a matter of preference depending on, for example, the particular ingredients available or the costs of involved in deciding which ingredients to combine as well as to provide for the particular attributes associated with such ingredients that would be desired in the final product (e.g. citric acid for preservation). It should be further noted that although instant claims 11 calls for the presence of the skim version of milk, it would have been further obvious to have employed same as a matter of preference, for example, in lowering the fat content of the product.

The claims further call for the amount of core portion with respect to the whole product, the amounts of albumen and gelatin, the amounts of salt and pepper, the amount of cheese and bacon employed in the core, the amount of predest, breading, batter, and water in the coating, and the amounts of a variety of ingredients (i.e. claim 11): However, it is not seen where such amounts would provide for a patentable distinction as same all appear to be simple matters of preference. Determination of such amounts to provide, for example, a product having a more stable structure, taste, or texture would have been well within the purview of a skilled artisan, and it would have been further obvious to have arrived at such amounts through routine experimental optimization.

9. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Rapp et al or Pickford taken together with either one of EP 11552627 or WO 02/080703.

The claims further call for the inclusion of eggs having certain amounts of omega-3 fatty acid. Eggs having increased amounts of omega-3 fatty acids is well

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known as taught, for example, by either one of EP 1155627 or WO 02/080703. Absent a showing of unexpected results, it would have been further obvious to have employed same for their art recognized health benefits with respect to the choice of egg used. As for the amounts of omega-3 fatty acids in said eggs, it is not seen where such amount would provide for a patentable distinction. Determination of such amount would have been well within the purview of a skilled artisan, and it would have been further obvious to have arrived at such amounts through routine experimental optimization as a matter of degree of this healthy benefit desired in said eggs.

***Response to Arguments***

10. Applicant's arguments filed 2/15/06 have been fully considered but they are not persuasive. Applicant's arguments have been addressed in view of the rejections above and the Response to Arguments section in the Final Office Action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

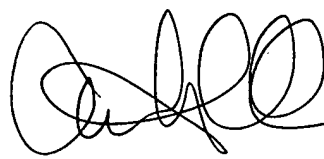
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier  
Primary Examiner  
Art Unit 1761

Anthony Weier  
April 21, 2006



4/21/06